Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Carrier's Austin Representative Box
15

MFDR Date Received
JUNE 27, 2005

Respondent Name
PACIFIC EMPLOYERS INSURANCE CO

MFDR Tracking Number
M4-05-9946-02

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated July 18, 2005: "Enclosed are copies of EOB's from other carrier's, which show a higher rate of reimbursement, consistent to our usual and customary. We are requesting that Pacific Employers Insurance pay our claims at the usual and customary."

Requestor's Supplemental Position Summary Dated March 28, 2011: "1. **The Audited charges of $169,293.64 for [Claimant]'s hospital inpatient admission exceeds the $40,000 stop-loss threshold**. 2. **The services rendered to [Claimant] were unusually costly and extensive**…because:

- **The hospital stay involved unusually extensive services.** [Claimant] underwent a major surgical procedure. The 'left total knee arthroplasty' was classified in the *Perioperative Record* as an 'intensive major' procedure making this admission outside of the ordinary in terms of the complexity (and attendant cost and extensiveness) when compared to a 'minor' procedure…The patient experienced severe pain following the surgery as noted in the *Post-Anesthesia Care Record*. His breathing sounds, as recorded in the *Respiratory Therapy Patient Assessment*, were 'diminished bilaterally +/- or wheezing.' The admission is more costly because the surgery is so complicated; the care is more extensive because the procedure is so invasive.
- **The costs were front-loaded**. The cost associated with the hospital's services in this case were front loaded because in order to provide these unusually costly and extensive services the hospital had to incur major expense. Notably the hospital purchased $13,270.54 in implants of which the carrier has paid $0.
- **The length of stay was outside of the ordinary**. When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas was longer than most others. The average length of stay for hospital inpatient admissions system-wide in the State of Texas for 2005 was four (4) days. [Claimant's] admission lasted five (5) days. His hospital stay was outside of the ordinary (unusual) because the length of stay, five (5) days in [Claimant's] case, exceeded the system-wide average in Texas.
- **The cost of the admission as outside of the ordinary**. The hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm. The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2005…was $29,863.42. The average amount billed for hospital inpatient admissions with Principal

Diagnosis Code (722.10) and Principal Procedure Code (81.06) in 2005 was $45,999.73. The charge for [Claimant's] admission was $60,022.30; therefore, this admission was outside of the ordinary because it exceeded system norms… For these reasons, the Medical Fee Dispute Officer should find that the second-prong of the two part test is satisfied and order additional reimbursement be paid by the carrier according to the stop-loss calculation methodology."

Amount in Dispute: $54,432.30

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated July 14, 2005: "Payment for DOS 8/27/04-9/1/04. Amount billed was $60,022.30, amount paid was $5,590.00, amount in dispute $54,432.30. Improper documentation: Implant invoices were not submitted."

Response Submitted by: Pacific Employers Insurance

Respondent's Supplemental Position Summary: "Requestor, however, does not provide any information which demonstrates why the Stop-Loss Method should be applied and/or that the treatment/services provided for the disputed dates of service that were preauthorized were 'unusually extensive' and 'unusually costly'."

Response Submitted by: John D. Pringle

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 27, 2004 through September 1, 2004	Inpatient Hospital Services	$54,432.30	$8,151.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits
- F-Reduction according to medical fee guideline.
- O-Denial after reconsideration.

Dispute M4-05-9946 was originally decided on October 25, 2007 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-08-0902.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a February 16, 2009 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed.

U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION

CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.

Issues

1. Did the audited charges exceed $40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $60,022.30. The Division concludes that the total audited charges exceed $40,000.
2. In its original position statement, the requestor asserts that "Enclosed are copies of EOB's from other carrier's, which show a higher rate of reimbursement, consistent to our usual and customary. We are requesting that Pacific Employers Insurance pay our claims at the usual and customary." 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." The requestor's original position statement failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services. In its supplemental position statement, the requestor considered the Courts' final judgment. In regards to whether the services were unusually extensive,

the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. The requestor's supplemental position statement asserts, that "The services rendered to [Claimant] were unusually costly and extensive…because: The hospital stay involved unusually extensive services. The 'left total knee arthroplasty' was classified in the *Perioperative Record* as an 'intensive major' procedure making this admission outside of the ordinary in terms of the complexity (and attendant cost and extensiveness) when compared to a 'minor' procedure" The requestor's position that this admission is unusually extensive due to the type of surgical procedure fails to meet the requirements of §134.401(c)(2)(C) because the requestor failed to demonstrate how the services in dispute were unusually extensive in relation to similar knee surgeries or admissions.

The requestor goes on to state:

> When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas was longer than most others. The average length of stay for hospital inpatient admissions system-wide in the State of Texas for 2005 was four (4) days. [Claimant's] admission lasted five (5) days. His hospital stay was outside of the ordinary (unusual) because the length of stay, five (5) days in [Claimant's] case, exceeded the system-wide average in Texas.

The Third Court of Appeals' November 13, 2008 opinion states that "…independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." A review of the data reports provided by the requestor finds that although length of stay for the services in dispute exceeded the average length of stay, the requestor did not demonstrate or explain how merely exceeding the average length of stay would: (1) constitute unusually extensive services; (2) categorize this case among the relatively few cases to which the stop-loss method may apply. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

3. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor in its supplemental position summary states:

> The hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm. The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2005…was $29,863.42. The average amount billed for hospital inpatient admissions with Principal Diagnosis Code (722.10) and Principal Procedure Code (81.06) in 2005 was $45,999.73. The charge for [Claimant's] admission was $60,022.30; therefore, this admission was outside of the ordinary because it exceeded system norms… For these reasons, the Medical Fee Dispute Officer should find that the second-prong of the two part test is satisfied and order additional reimbursement be paid by the carrier according to the stop-loss calculation methodology.

The division notes that the audited charges of $60,022.30 are discussed above as a separate and distinct factor pursuant to 28 Texas Administrative Code §134.401(c)(6)(A)(i)). The requestor asserts that because the amount ***billed charges*** exceeds the average for the same principal diagnosis and procedure codes, the ***cost*** of the services is therefore "out of the ordinary." Although the requestor lists and quantifies ***billing*** data, the requestor fails to list or quantify the ***costs*** associated with the disputed services. In the adoption preamble to the Division's former *Acute Care Inpatient Hospital Fee Guideline*, 22 *Texas Register* 6276, the division concluded that "hospital charges are not a valid indicator of a hospital's costs of providing services." The division concludes that the billed charges for the services do not represent the cost of providing those services. The requestor fails to demonstrate that the hospital's resources used in this particular admission are unusually costly.

4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was five days. The surgical per diem rate of $1,118 multiplied by the length of stay of five days results in an allowable amount of $5,590.00.

- 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $22,020.00.
- The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Imp Patella Various sizes	1	$690.00	$759.00
Imp Screw SI	1	$2,640.00	$2,904.00
Imp Screw SI	1	$1,870.00	$2,057.00
Imp Screw SI	1	$1,210.00	$1,331.00
Imp Pins Disp Headless	4	$150.00/each	$660.00
Imp Pins Casper Dist	4	$100.00/each	$440.00
TOTAL	12		$8,151.00

The division concludes that the total allowable for this admission is $13,741.00. The respondent issued payment in the amount of $5,590.00. Based upon the documentation submitted, additional reimbursement in the amount of $8,151.00 is recommended Based upon the documentation submitted, additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $8,151.00 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	2/28/2013 Date

8151YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.